

FORTY-FIFTH DAY - MARCH 17, 2003**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
FIRST SESSION****FORTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, March 17, 2003

PRAYER

The prayer was offered by Pastor Neil Vik, Good Samaritan Village, Hastings, Nebraska.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Brashear who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-fourth day was approved.

PRESENTED TO THE GOVERNOR

Presented to the Governor on March 14, 2003, at 12:05 p.m. were the following: LBs 199, 205, 218, 219e, 222, 228, 228A, 234, 234A, 238, 241, 243, 257, 273, and 274.

(Signed) Jamie Kruse
Clerk of the Legislature's Office

RESOLUTIONS

LEGISLATIVE RESOLUTION 49. Introduced by Foley, 29.

WHEREAS, the Lincoln Southeast High School girls' basketball team won the Class A Girls State High School Basketball Tournament Championship with a fifty to forty-five win over Lincoln East High School; and

WHEREAS, the team completed its season with a record of twenty-one wins and four losses; and

WHEREAS, with its title victory, Lincoln Southeast won its eighth state

championship in girls basketball, a Class A record; and

WHEREAS, the Legislature should recognize the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Lincoln Southeast High School girls' basketball team be congratulated for their exemplary effort this season and in the Girls State High School Basketball Tournament.

2. That a copy of this resolution be sent to Coach John Larsen and Lincoln Southeast High School.

Laid over.

LEGISLATIVE RESOLUTION 50. Introduced by Foley, 29.

WHEREAS, Jonathan Bishop has earned the rank of Eagle Scout in the Boy Scouts of America, that organization's highest rank; and

WHEREAS, Jonathan Bishop is a member of the Boy Scout Troop 54 of the Cathedral of the Risen Christ; and

WHEREAS, in achieving this rank, Jonathan Bishop advanced through five ranks and earned 24 merit badges; and

WHEREAS, for his Eagle Scout project, Jonathan Bishop built a tennis practice wall for the Tierra Neighborhood Park in Lincoln; and

WHEREAS, fewer than four percent of all boys who join the Boy Scouts attain the rank of Eagle Scout; and

WHEREAS, Jonathan Bishop has achieved great success as an exemplary member of the Scouting program and has represented his troop and community with excellence; and

WHEREAS, a Court of Honor will be held for Jonathan Bishop on Saturday, April 5, 2003, at Cathedral of the Risen Christ Catholic Church at which time Jonathan will be presented with the Eagle Scout Badge.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature commends Jonathan Bishop for his dedication, perseverance, and hard work in obtaining this distinguished rank.

2. That a copy of this resolution be sent to Jonathan Bishop and his family.

Laid over.

ANNOUNCEMENT

Speaker Bromm designates LBs 59, 65, 112, 172, 184, 232, 267, 278, 301, 329, 430, 439, 457, 500, 528, 531, 539, 572, 609, 656, 670, 678, 720, 721, and 747 as Speaker priority bills.

MOTION - Approve Appointments

Senator Kremer moved the adoption of the Agriculture Committee report for the confirmation of the following appointments found on page 828: State Fair Board - Jo Kinsey, Sallie Atkins, Frank Partsch, and John Peetz.

Voting in the affirmative, 40:

Aguilar	Connealy	Janssen	Mossey	Schrock
Baker	Cudaback	Johnson	Pedersen, Dw.	Smith
Bourne	Cunningham	Kremer	Preister	Stuhr
Bromm	Engel	Kruse	Price	Stuthman
Burling	Erdman	Louden	Quandahl	Thompson
Byars	Foley	Maxwell	Raikes	Tyson
Chambers	Friend	McDonald	Redfield	Vrtiska
Combs	Hudkins	Mines	Schimek	Wehrbein

Voting in the negative, 0.

Present and not voting, 8:

Beutler	Hartnett	Jones	Pederson, D.
Brown	Jensen	Landis	Synowiecki

Excused and not voting, 1:

Brashear

The appointments were confirmed with 40 ayes, 0 nays, 8 present and not voting, and 1 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 209. Considered.

Senator Chambers offered the following amendment:

FA1200

Page 12, reinstate stricken language in lines 27-28 through lines 1-3 on page 13.

Pending.

STANDING COMMITTEE REPORTS
General Affairs

LEGISLATIVE BILL 525. Placed on General File as amended.

Standing Committee amendment to LB 525:
AM0828

1 1. Insert the following new section:
2 "Sec. 2. Section 53-1,104, Revised Statutes Supplement,
3 2002, is amended to read:
4 53-1,104. (1) Any licensee which sells or permits the
5 sale of any alcoholic liquor not authorized under the terms of such
6 license on the licensed premises or in connection with such
7 licensee's business or otherwise shall be subject to suspension,
8 cancellation, or revocation of such license by the commission.
9 (2) When an order suspending a retail license to sell
10 alcoholic liquor becomes final, the licensee may elect to pay a
11 cash penalty to the commission in lieu of suspending sales of
12 alcoholic liquor for the designated period if such election is not
13 prohibited by order of the commission. Except as otherwise
14 provided in subsection (3) of this section, for the first such
15 suspension for any licensee, the penalty shall be fifty dollars per
16 day, and for a second or any subsequent suspension, the penalty
17 shall be one hundred dollars per day.
18 (3)(a) For a second suspension for violation of section
19 53-180 or 53-180.02 occurring within ~~four~~ seven years after the
20 date of the first suspension, the commission, in its discretion,
21 may order that the licensee be required to suspend sales of
22 alcoholic liquor for a period of time not to exceed forty-eight
23 hours and that the licensee may not elect to pay a cash penalty.
24 The commission may use the required suspension of sales of
1 alcoholic liquor penalty either alone or in conjunction with
2 suspension periods for which the licensee may elect to pay a cash
3 penalty. For purposes of this subsection, second suspension for
4 violation of section 53-180 shall include suspension for a
5 violation of section 53-180.02 following suspension for a violation
6 of section 53-180 and second suspension for violation of section
7 53-180.02 shall include suspension for a violation of section
8 53-180 following suspension for a violation of section 53-180.02;
9 (b) For a third or subsequent suspension for violation of
10 section 53-180 or 53-180.02 occurring within ~~four~~ seven years after
11 the date of the first suspension, the commission, in its
12 discretion, may order that the licensee be required to suspend
13 sales of alcoholic liquor for a period of time not to exceed
14 fifteen days and that the licensee may not elect to pay a cash
15 penalty. The commission may use the required suspension of sales
16 of alcoholic liquor penalty either alone or in conjunction with
17 suspension periods for which the licensee may elect to pay a cash
18 penalty. For purposes of this subsection, third or subsequent
19 suspension for violation of section 53-180 shall include suspension
20 for a violation of section 53-180.02 following suspension for a
21 violation of section 53-180 and third or subsequent suspension for
22 violation of section 53-180.02 shall include suspension for a
23 violation of section 53-180 following suspension for a violation of

24 section 53-180.02; and

25 (c) For a first suspension based upon a finding that a
 26 licensee or an employee or agent of the licensee has been convicted
 27 of possession of a gambling device on a licensee's premises in
 1 violation of sections 28-1107 to 28-1111, the commission, in its
 2 discretion, may order that the licensee be required to suspend
 3 sales of alcoholic liquor for thirty days and that the licensee may
 4 not elect to pay a cash penalty. For a second or subsequent
 5 suspension for such a violation of sections 28-1107 to 28-1111
 6 occurring within four years after the date of the first suspension,
 7 the commission shall order that the license be canceled.

8 (4) For any licensee which has no violation for a period
 9 of ~~four~~ seven years consecutively, any suspension shall be treated
 10 as a new first suspension.

11 (5) The election provided for in subsection (2) of this
 12 section shall be filed with the commission in writing one week
 13 before the suspension is ordered to commence and shall be
 14 accompanied by payment in full of the sum required by this section.
 15 If such election has not been received by the commission by the
 16 close of business one week before the day such suspension is
 17 ordered to commence, it shall be conclusively presumed that the
 18 licensee has elected to close for the period of the suspension and
 19 any election received later shall be absolutely void and the
 20 payment made shall be returned to the licensee. The election shall
 21 be made on a form prescribed by the commission. All funds received
 22 under this section shall be remitted to the State Treasurer for
 23 credit to the temporary school fund."

24 2. On page 2, line 9, after "be" insert "guilty of a
 25 Class III misdemeanor and shall be".

26 3. On page 3, line 1, strike "(a)"; in lines 3, 6, 8,
 27 and 11 strike "suspension" and insert "impoundment"; in line 6
 1 strike "(i)" and insert "(a)"; in line 8 strike "(ii)" and insert
 2 "(b)"; in line 10 strike "(iii)" and insert "(c)"; and strike lines
 3 13 through 28.

4 4. On page 4, strike lines 1 through 4; and in line 5
 5 strike "(5)" and insert "(4)".

6 5. Amend the repealer and renumber the remaining
 7 sections accordingly.

(Signed) Ray Janssen, Chairperson

Government, Military and Veterans Affairs

LEGISLATIVE BILL 253. Placed on General File.

LEGISLATIVE BILL 799. Placed on General File as amended.
 Standing Committee amendment to LB 799:
 AM0849

1 1. Insert the following new section:

- 2 "Sec. 3. Since an emergency exists, this act takes
3 effect when passed and approved according to law."

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

State Fire Marshal
Dennis C. Hohbein

VOTE: Aye: Senators Aguilar, Brown, Burling, Combs, McDonald, and Schimek. Nay: None. Absent: Senators Smith and Vrtiska.

(Signed) DiAnna R. Schimek, Chairperson

SELECT COMMITTEE REPORTS **Enrollment and Review**

LEGISLATIVE BILL 148. Placed on Select File as amended.
E & R amendment to LB 148:
AM7088

- 1 1. On page 39, line 23, strike the first comma and
2 insert "or" and strike the second comma.
3 2. On page 45, line 24, after "12" insert "of this act";
4 and in line 25 after "43" insert "of this act".
5 3. On page 46, line 6, strike the second "to" and insert
6 a comma.

LEGISLATIVE BILL 197. Placed on Select File as amended.
E & R amendment to LB 197:
AM7086

- 1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:
3 "Section 1. Section 48-621, Revised Statutes Supplement,
4 2002, is amended to read:
5 48-621. (1) The administrative fund shall consist of the
6 Employment Security Administration Fund and the Employment Security
7 Special Contingent Fund. Each fund shall be maintained as a
8 separate and distinct account in all respects, as follows:
9 (a) There is hereby created in the state treasury a
10 special fund to be known as the Employment Security Administration
11 Fund. All money credited to this fund is hereby appropriated and
12 made available to the Commissioner of Labor. All money in this
13 fund shall be expended solely for the purposes and in the amounts
14 found necessary as defined by the specific federal programs, state
15 statutes, and contract obligations for the proper and efficient
16 administration of all programs of the Department of Labor. The
17 fund shall consist of all money appropriated by this state and all

18 money received from the United States of America or any agency
19 thereof, including the Department of Labor and the Railroad
20 Retirement Board, or from any other source for such purpose. Money
21 received from any agency of the United States or any other state as
22 compensation for services or facilities supplied to such agency,
23 any amounts received pursuant to any surety bond or insurance
24 policy for losses sustained by the Employment Security
Administration Fund or by reason of damage to equipment or supplies
2 purchased from money in such fund, and any proceeds realized from
3 the sale or disposition of any equipment or supplies which may no
4 longer be necessary for the proper administration of such ~~law~~
5 programs shall also be credited to this fund. All money in this
6 fund shall be deposited, administered, and disbursed in the same
7 manner and under the same conditions and requirements as is
8 provided by law for other special funds in the state treasury. Any
9 balances in this fund, except balances of money therein
10 appropriated from the General Fund of this state, shall not lapse
11 at any time but shall be continuously available to the commissioner
12 for expenditure consistent with the Employment Security Law. Any
13 money in the Employment Security Administration Fund available for
14 investment shall be invested by the state investment officer
15 pursuant to the Nebraska Capital Expansion Act and the Nebraska
16 State Funds Investment Act; and

17 (b) There is hereby created in the state treasury a
18 special fund to be known as the Employment Security Special
19 Contingent Fund. Any money in the Employment Security Special
20 Contingent Fund available for investment shall be invested by the
21 state investment officer pursuant to the Nebraska Capital Expansion
22 Act and the Nebraska State Funds Investment Act. All money
23 collected under section 48-655 as interest on delinquent
24 contributions, less refunds, shall be credited to this fund from
25 the clearing account of the Unemployment Compensation Fund at the
26 end of each calendar quarter. Such money shall not be expended or
27 available for expenditure in any manner which would permit its
1 substitution for or a corresponding reduction in federal funds
2 which would in the absence of such money be available to finance
3 expenditures for the administration of the unemployment insurance
4 law, but nothing in this section shall prevent the money from being
5 used as a revolving fund to cover expenditures necessary and proper
6 under the law for which federal funds have been duly requested but
7 not yet received, subject to the charging of such expenditures
8 against such federal funds when received. The money in this fund
9 may be used by the Commissioner of Labor only as follows:

10 (i) To replace within a reasonable time any money
11 received by this state pursuant to section 302 of the federal
12 Social Security Act, as amended, and required to be paid under
13 section 48-622;
14 (ii) To meet special extraordinary and contingent
15 expenses which are deemed essential for good administration but

16 which are not provided in grants from the Secretary of Labor of the
17 United States and, for this purpose, no expenditures shall be made
18 from this fund except on written authorization by the Governor at
19 the request of the Commissioner of Labor;

20 (iii) To be transferred to the Nebraska Community College
21 Aid Cash Fund; and

22 (iv) To be transferred to the Job Training Cash Fund.

23 (2)(a) Money credited to the account of this state in the
24 Unemployment Trust Fund by the United States Secretary of the
25 Treasury pursuant to section 903 of the Social Security Act may not
26 be requisitioned from this state's account or used except for the
27 payment of benefits and for the payment of expenses incurred for
1 the administration of the Employment Security Law and public
2 employment offices. Such money may be requisitioned pursuant to
3 section 48-619 for the payment of benefits. Such money may also be
4 requisitioned and used for the payment of expenses incurred for the
5 administration of the Employment Security Law and public employment
6 offices but only pursuant to a specific appropriation by the
7 Legislature and only if the expenses are incurred and the money is
8 requisitioned after the date of enactment of an appropriation law
9 which specifies the purposes for which such money is appropriated
10 and the amounts appropriated therefor. Such appropriation is
11 subject to the following conditions:

12 (i) The period within which such money may be obligated
13 is limited to a period ending not more than two years after the
14 effective date of the appropriation law; and

15 (ii) The amount which may be obligated is limited to an
16 amount which does not exceed the amount by which the aggregate of
17 the amounts transferred to the account of this state pursuant to
18 section 903 of the Social Security Act exceeds the aggregate of the
19 amounts used by this state pursuant to the Employment Security Law
20 and charged against the amounts transferred to the account of this
21 state.

22 (b) For purposes of subdivision (2)(a)(ii) of this
23 section, the amounts obligated under an appropriation for the
24 administrative purposes described in such subdivision shall be
25 charged against transferred amounts at the exact time the
26 obligation is entered into.

27 (c) The appropriation, obligation, and expenditure or
1 other disposition of money appropriated under this subsection shall
2 be accounted for in accordance with standards established by the
3 United States Secretary of Labor.

4 (d) Money appropriated as provided in this subsection for
5 the payment of expenses of administration shall be requisitioned as
6 needed for the payment of obligations incurred under such
7 appropriation and, upon requisition, shall be credited to the
8 Employment Security Administration Fund from which such payments
9 shall be made. Money so credited shall, until expended, remain a
10 part of the Employment Security Administration Fund and, if it will

11 not be immediately expended, shall be returned promptly to the
 12 account of this state in the Unemployment Trust Fund.
 13 (e) Notwithstanding subdivision (2)(a) of this section,
 14 money credited with respect to federal fiscal years 1999, 2000, and
 15 2001 shall be used solely for the administration of the
 16 unemployment compensation program and are not subject to
 17 appropriation by the Legislature.

18 (3) There is hereby appropriated out of the funds made
 19 available to this state in federal fiscal year 2002 under section
 20 903(d) of the federal Social Security Act, as amended, the sum of
 21 \$6,800,484, or so much thereof as may be necessary, to be used,
 22 under the direction of the Department of Labor, for the
 23 administration of the Employment Security Law and public employment
 24 offices. The expenditure or other disposition of money
 25 appropriated under this subsection shall be accounted for in
 26 accordance with standards established by the United States
 27 Secretary of Labor. Reed Act distributions appropriated pursuant
 1 to this subsection may be amortized with federal grant funds
 2 provided pursuant to Title III of the federal Social Security Act
 3 and the federal Wagner-Peyser Act for the purpose of administering
 4 the state unemployment compensation and employment service programs
 5 to the extent allowed under such acts and the regulations adopted
 6 pursuant thereto. Except as specifically provided in this
 7 subsection, all provisions of subsection (2) of this section,
 8 except subdivision (2)(a)(i) of this section, shall apply to this
 9 appropriation. The commissioner shall submit an annual report to
 10 the Governor, the Speaker of the Legislature, and the chairpersons
 11 of the Appropriations Committee and the Business and Labor
 12 Committee of the Legislature describing expenditures made pursuant
 13 to this subsection.

14 Sec. 2. Original section 48-621, Revised Statutes
 15 Supplement, 2002, is repealed.

16 Sec. 3. Since an emergency exists, this act takes effect
 17 when passed and approved according to law."

18 2. On page 1, line 3, strike "and"; and in line 4 after
 19 "section" insert "; and to declare an emergency".

LEGISLATIVE BILL 756. Placed on Select File as amended.

E & R amendment to LB 756:

AM7087

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 "Section 1. Sections 1 to 8 of this act shall be known
- 4 and may be cited as the Cancer Drug Repository Program Act.

5 Sec. 2. For purposes of the Cancer Drug Repository
 6 Program Act:

- 7 (1) Cancer drug means a prescription drug used to treat
- 8 (a) cancer or its side effects or (b) the side effects of a
- 9 prescription drug used to treat cancer or its side effects;

10 (2) Department means the Department of Health and Human
11 Services Regulation and Licensure;

12 (3) Health care facility has the definition found in
13 section 71-413;

14 (4) Health clinic has the definition found in section
15 71-416;

16 (5) Hospital has the definition found in section 71-419;

17 (6) Pharmacy has the definition found in section 71-425;

18 (7) Physician's office means the office of a person
19 licensed to practice medicine and surgery or osteopathic medicine
20 and surgery;

21 (8) Prescribing practitioner means a health care
22 practitioner licensed under the Uniform Licensing Law who is
23 authorized to prescribe cancer drugs; and

24 (9) Prescription drug has the definition found in section
1 71-1,142.

2 Sec. 3. The department shall establish a cancer drug
3 repository program for accepting donated cancer drugs and
4 dispensing such drugs to Nebraska residents. Participation in the
5 program shall be voluntary.

6 Sec. 4. Any person or entity, including, but not limited
7 to, a cancer drug manufacturer or health care facility, may donate
8 cancer drugs to the cancer drug repository program. Cancer drugs
9 may be donated at a physician's office, pharmacy, hospital, or
10 health clinic that elects to participate in the program and meets
11 criteria established by the department for such participation.

12 Sec. 5. (1) A cancer drug shall only be accepted or
13 dispensed under the cancer drug repository program if such drug is
14 in its original, unopened, sealed, and tamper-evident unit dose
15 packaging, except that a cancer drug packaged in single unit doses
16 may be accepted and dispensed if the outside packaging is opened
17 but the single-unit-dose packaging is unopened.

18 (2) A cancer drug shall not be accepted or dispensed
19 under the cancer drug repository program if (a) such drug bears an
20 expiration date that is earlier than six months after the date the
21 drug was donated or (b) such drug is adulterated or misbranded as
22 described in section 71-2401 or 71-2402.

23 (3) Subject to limitations provided in this section,
24 unused cancer drugs dispensed under the medical assistance program
25 established in section 68-1018 may be accepted and dispensed under
26 the cancer drug repository program.

27 Sec. 6. (1) A physician's office, pharmacy, hospital, or
1 health clinic that accepts donated cancer drugs under the cancer
2 drug repository program shall comply with all applicable provisions
3 of state and federal law relating to the storage, distribution, and
4 dispensing of such drugs and shall inspect all such drugs prior to
5 dispensing to determine if they are adulterated or misbranded as
6 described in section 71-2401 or 71-2402. Such drugs shall only be
7 dispensed pursuant to a prescription issued by a prescribing

8 practitioner. Such drugs may be distributed to another
9 participating physician's office, pharmacy, hospital, or health
10 clinic for dispensing.

11 (2) A physician's office, pharmacy, hospital, or health
12 clinic may charge a handling fee for distributing or dispensing
13 cancer drugs under the cancer drug repository program. Such fee
14 shall be established in rules and regulations adopted and
15 promulgated by the department. Cancer drugs donated under the
16 program shall not be resold.

17 Sec. 7. (1) Any person or entity which exercises
18 reasonable care in donating, accepting, distributing, or dispensing
19 cancer drugs under the Cancer Drug Repository Program Act or rules
20 and regulations adopted and promulgated under the act shall be
21 immune from civil or criminal liability or professional
22 disciplinary action of any kind for any injury, death, or loss to
23 person or property relating to such activities.

24 (2) The donation of a cancer drug by a cancer drug
25 manufacturer does not absolve the manufacturer of any criminal or
26 civil liability that would have existed but for the donation,
27 including, but not limited to, liability for failure to transfer or
1 communicate product or consumer information or the expiration date
2 of the donated cancer drug.

3 Sec. 8. The department, upon the recommendation of the
4 Board of Pharmacy, shall adopt and promulgate rules and regulations
5 to carry out the Cancer Drug Repository Program Act. Initial rules
6 and regulations under the act shall be adopted and promulgated no
7 later than ninety days after the operative date of this act. Such
8 rules and regulations shall include, but not be limited to:

9 (1) Eligibility criteria and other standards and
10 procedures for physician's offices, pharmacies, hospitals, and
11 health clinics that accept and distribute or dispense donated
12 cancer drugs;

13 (2) Necessary forms for administration of the cancer drug
14 repository program, including, but not limited to, forms for use by
15 persons or entities that donate, accept, distribute, or dispense
16 cancer drugs under the program;

17 (3) The maximum handling fee that may be charged by
18 physician's offices, pharmacies, hospitals, or health clinics that
19 accept and distribute or dispense donated cancer drugs; and

20 (4)(a) Categories of cancer drugs that the cancer drug
21 repository program will accept for dispensing and (b) categories of
22 cancer drugs that the program will not accept for dispensing and
23 the reason that such drugs will not be accepted.

24 Sec. 9. This act becomes operative on September 15,
25 2003."

26 2. On page 1, line 2, after "Act" insert "; and to
27 provide an operative date".

E & R amendment to LB 726:

AM7085

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:
3 "Section 1. Section 81-1254, Reissue Revised Statutes of
4 Nebraska, is amended to read:
5 81-1254. (1) The governing body of any county may after
6 a public hearing adopt a resolution to impose an additional sales
7 tax of not to exceed two percent upon the total consideration
8 charged for occupancy of any space furnished by any hotel if such
9 county has created a County Visitors Promotion Fund and a visitors
10 committee pursuant to section 81-1255. The proceeds from such tax
11 shall be paid to the County Visitors Promotion Fund.
12 (2) The governing body of any county ~~with a population of~~
13 ~~more than three hundred thousand inhabitants~~ may after a public
14 hearing adopt a resolution to impose an additional sales tax of not
15 to exceed two percent upon the total consideration charged for
16 occupancy of any space furnished by any hotel if such county has
17 created a County Visitors Improvement Fund and a visitors committee
18 pursuant to section 81-1255. The proceeds from such tax shall be
19 paid to the County Visitors Improvement Fund.
20 (3) The taxes authorized by this section shall be in
21 addition to the tax authorized in section 81-1253 or any other
22 sales tax imposed or authorized.
23 Sec. 2. Section 81-1255, Reissue Revised Statutes of
24 Nebraska, is amended to read:
1 81-1255. The governing body of the county shall after a
2 public hearing adopt a resolution establishing a County Visitors
3 Promotion Fund and a visitors committee which shall serve as an
4 advisory committee to the county board in administering the
5 proceeds from the taxes provided to the county by the Nebraska
6 Visitors Development Act. The governing body of a county ~~with a~~
7 ~~population of more than three hundred thousand inhabitants~~ may also
8 after a public hearing adopt a resolution establishing a County
9 Visitors Improvement Fund. The proceeds of the County Visitors
10 Promotion Fund shall be used generally to promote, encourage, and
11 attract visitors to come to the county and use the travel and
12 tourism facilities within the county. The proceeds of the County
13 Visitors Improvement Fund shall be used to improve the visitor
14 attractions and facilities in the county, except that no proceeds
15 shall be used to improve a facility in which parimutuel wagering is
16 conducted. If the visitors committee determines that the visitor
17 attractions in the county are adequate and do not require
18 improvement, the committee may use the County Visitors Improvement
19 Fund to promote, encourage, and attract visitors to the county to
20 use the county's travel and tourism facilities. The committee
21 shall consist of five ~~to~~ or seven members appointed by the
22 governing body of the county. ~~Two members of the committee shall~~
23 ~~be in the hotel industry.~~ If the committee has five members, at

24 least one but no more than two members of the committee shall be in
 25 the hotel industry. If the committee has seven members, at least
 26 two but no more than three members of the committee shall be in the
 27 hotel industry.

1 Such appointees shall serve without compensation, except
 2 for reimbursement for necessary expenses. Committee members shall
 3 serve for terms of four years, except that at least half of those
 4 appointed shall be appointed for initial terms of two years.
 5 Vacancies shall be filled in the same manner as the initial
 6 appointments. The committee shall elect a chairperson and
 7 vice-chairperson from among its members to serve for terms of two
 8 years.

9 Sec. 3. Original sections 81-1254 and 81-1255, Reissue
 10 Revised Statutes of Nebraska, are repealed."

11 2. On page 1, strike beginning with "allow" in line 3
 12 through "tax" in line 4 and insert "change provisions relating to
 13 imposition of a lodging tax, creation of a County Visitors
 14 Improvement Fund, and establishment of a visitors committee".

(Signed) Ray Mossey, Chairperson

STANDING COMMITTEE REPORT **Natural Resources**

The Natural Resources Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Game and Parks Commission

Mark Pinkerton

James Stuart

William Zutavern

VOTE: Aye: Senators Friend, Hudkins, Jones, Kremer, Loudon, Preister, Schrock, and Stuhr. Nay: None. Absent: None.

(Signed) Ed Schrock, Chairperson

AMENDMENT - Print in Journal

Senator Schimek filed the following amendment to LB 357A:
 AM0855

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. There is hereby appropriated (1) \$150,000
- 4 from the Election Administration Fund for FY2002-03 and (2)
- 5 \$2,230,000 from the Election Administration Fund for FY2003-04 to
- 6 the Secretary of State, for Program 45, to aid in carrying out the
- 7 provisions of Legislative Bill 357, Ninety-eighth Legislature,

8 First Session, 2003.

9 Total expenditures for permanent and temporary salaries
10 and per diems from funds appropriated in this section shall not
11 exceed \$30,000 for FY2002-03 or \$190,000 for FY2003-04.
12 Sec. 2. There is hereby appropriated \$2,200 from the
13 Department of Motor Vehicles Cash Fund for FY2003-04 to the
14 Department of Motor Vehicles, for Program 70, to aid in carrying
15 out the provisions of Legislative Bill 357, Ninety-eighth
16 Legislature, First Session, 2003.
17 No expenditures for permanent and temporary salaries and
18 per diems for state employees shall be made from funds appropriated
19 in this section.
20 Sec. 3. Since an emergency exists, this act takes effect
21 when passed and approved according to law."

UNANIMOUS CONSENT - Member Excused

Senator McDonald asked unanimous consent to be excused. No objections.
So ordered.

GENERAL FILE

LEGISLATIVE BILL 209. The Chambers pending amendment, FA1200,
found in this day's Journal, was renewed.

The Chambers amendment was adopted with 32 ayes, 0 nays, 16 present and
not voting, and 1 excused and not voting.

Advanced to E & R for review with 38 ayes, 0 nays, 10 present and not
voting, and 1 excused and not voting.

LEGISLATIVE BILL 608. Title read. Considered.

SPEAKER BROMM PRESIDING

The Standing Committee amendment, AM0621, printed separately and
referred to on page 708, was considered.

Senator Brashear requested a division of the question on the Standing
Committee amendment.

The Chair sustained the division of the question.

The first Standing Committee amendment is as follows:
FA1204

26 Sec. 3. Section 77-27,188, Revised Statutes Supplement,
27 2002, is amended to read:

- 1 77-27,188. (1)(a) A credit against the taxes imposed by
- 2 the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer

3 engaged in a qualifying business as described in section 77-27,189
4 located within the boundaries of an enterprise zone as defined and
5 designated by the Department of Economic Development pursuant to
6 the Enterprise Zone Act. For taxable years beginning or deemed to
7 begin on or before December 31, 2003, a credit against the taxes
8 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
9 taxpayer engaged in a qualifying business as described in section
10 77-27,189 who increases the employment of such business in this
11 state by two new equivalent Nebraska employees and who makes an
12 increased investment in this state of at least seventy-five
13 thousand dollars during a taxable year.

14 (b) Any taxpayer who has been allowed a credit under
15 subdivision (1)(a) of this section during the preceding five
16 taxable years, not counting carryovers, shall be allowed a credit
17 for an increase in employment in this state by two new equivalent
18 Nebraska employees.

19 (2) Except as provided in subsection (3) of this section,
20 the amount of the credit shall be one thousand five hundred dollars
21 for each new equivalent Nebraska employee and one thousand dollars
22 for each seventy-five thousand dollars of increased investment.

23 (3) For any taxpayer described in subdivision (1)(a) of
24 this section which is also located within the boundaries of an
25 enterprise zone as defined and designated by the Department of
26 Economic Development pursuant to the Enterprise Zone Act, the
27 amount of the credit shall be:

1 (a) Four thousand five hundred dollars for each new
2 equivalent Nebraska employee and three thousand dollars for each
3 seventy-five thousand dollars of increased investment if at least
4 fifty percent of the new equivalent Nebraska employees of the
5 taxpayer reside within the boundaries of the enterprise zone; or

6 (b) Four thousand five hundred dollars for each new
7 equivalent Nebraska employee residing within the boundaries of the
8 enterprise zone, one thousand five hundred dollars for each new
9 equivalent Nebraska employee not residing within the boundaries of
10 the enterprise zone, and one thousand dollars for each seventy-five
11 thousand dollars of increased investment if less than fifty percent
12 of the new equivalent Nebraska employees of the taxpayer reside
13 within the boundaries of the enterprise zone.

14 The credit allowed to a taxpayer pursuant to this
15 subsection shall not exceed seventy-five thousand dollars in any
16 one tax year.

17 For purposes of this ~~subdivision~~ subsection, employees
18 residing within the boundaries of an enterprise zone shall be
19 construed to mean employees residing within a county in which an
20 enterprise zone is located when the enterprise zone is not located
21 in a city of the primary or metropolitan class.

22 For purposes of this ~~subdivision~~ subsection, an employee
23 residing within the enterprise zone shall mean an individual who is
24 domiciled within the enterprise zone for the entire pay period.

25 (4) The credit shall be applied as provided in section
26 77-27,188.01.

27 (5) Any taxpayer who has qualified for a credit in the
1 amount set out in subsection (3) of this section may elect to
2 receive either the amount as calculated pursuant to subsection (2)
3 or (3) of this section.

4 (6) An employee of a qualified employee leasing company
5 shall be considered to be an employee of the client-lessee for
6 purposes of this section if the employee performs services for the
7 client-lessee. A qualified employee leasing company shall provide
8 the Department of Revenue access to the records of employees leased
9 to the client-lessee.

15 Sec. 5. Section 77-4103, Revised Statutes Supplement,
16 2002, is amended to read:

17 77-4103. For purposes of the Employment and Investment
18 Growth Act, unless the context otherwise requires:

19 (1) Any term shall have the same meaning as used in
20 Chapter 77, article 27;

21 (2) Base year shall mean the year immediately preceding
22 the year during which the application was submitted;

23 (3) Base-year employee shall mean any individual who was
24 employed in Nebraska and subject to the Nebraska income tax on
25 compensation received from the taxpayer or its predecessors during
26 the base year and who is employed at the project;

27 (4) Compensation shall mean the wages and other payments
1 subject to withholding for federal income tax purposes;

2 (5) Entitlement period shall mean the year during which
3 the required increases in employment and investment were met or
4 exceeded, and the next six years;

5 (6) Equivalent employees shall mean the number of
6 employees computed by dividing the total hours paid in a year by
7 the product of forty times the number of weeks in a year;

8 (7) Investment shall mean the value of qualified property
9 incorporated into or used at the project. For qualified property
10 owned by the taxpayer, the value shall be the original cost of the
11 property. For qualified property rented by the taxpayer, the
12 average net annual rent shall be multiplied by the number of years
13 of the lease for which the taxpayer was originally bound, not to
14 exceed ten years or the end of the third year after the entitlement
15 period, whichever is earlier. The rental of land included in and
16 incidental to the leasing of a building shall not be excluded from
17 the computation;

18 (8) Motor vehicle shall mean any motor vehicle, trailer,
19 or semitrailer as defined in section 60-301 and subject to
20 licensing for operation on the highways;

24 (10) Nebraska employee shall mean an individual who is
25 either a resident or partial-year resident of Nebraska;

26 ~~(10)~~ (11) Number of new employees shall mean the excess
27 of the number of equivalent employees employed at the project

1 during a year over the number of equivalent employees during the
2 base year;

3 ~~(11)~~ (12) Qualified business shall mean any business
4 engaged in the activities listed in subdivisions ~~(b)(i) through (v)~~
5 (a)(ii)(A) through (E) of this subdivision or in the storage,
6 warehousing, distribution, transportation, or sale of tangible
7 personal property. Qualified business shall not include:

8 (a) Any ~~any~~ business activity in which eighty percent or
9 more of the total sales are sales to the ultimate consumer of food
10 prepared for immediate consumption or are sales to the ultimate
11 consumer of tangible personal property which is not ~~(a) (i)~~
12 assembled, fabricated, manufactured, or processed by the taxpayer
13 or ~~(b) (ii)~~ used by the purchaser in any of the following
14 activities:

15 ~~(i)~~ (A) The conducting of research, development, or
16 testing for scientific, agricultural, animal husbandry, food
17 product, or industrial purposes;

18 ~~(ii)~~ (B) The performance of data processing,
19 telecommunication, insurance, or financial services. Financial
20 services for purposes of this subdivision shall only include
21 financial services provided by any financial institution subject to
22 tax under Chapter 77, article 38, or any person or entity licensed
23 by the Department of Banking and Finance or the Securities and
24 Exchange Commission;

25 ~~(iii)~~ (C) The assembly, fabrication, manufacture, or
26 processing of tangible personal property;

27 ~~(iv)~~ (D) The administrative management of any activities,
1 including headquarter facilities relating to such activities; or
2 ~~(v)~~ (E) Any combination of the activities listed in ~~this~~
3 subdivision (a)(ii) of this subdivision;

6 (c) Any casino;

7 ~~(12)~~ (13) Qualified employee leasing company shall mean a
8 company which places all employees of a client-lessee on its
9 payroll and leases such employees to the client-lessee on an
10 ongoing basis for a fee and, by written agreement between the
11 employee leasing company and a client-lessee, grants to the
12 client-lessee input into the hiring and firing of the employees
13 leased to the client-lessee;

14 ~~(13)~~ (14) Qualified property shall mean any tangible
15 property of a type subject to depreciation, amortization, or other
16 recovery under the Internal Revenue Code of 1986, or the components
17 of such property, that will be located and used at the project.
18 Qualified property shall not include (a) aircraft, barges, motor
19 vehicles, railroad rolling stock, or watercraft or (b) property
20 that is rented by the taxpayer qualifying under the Employment and
21 Investment Growth Act to another person;

4 ~~(14)~~ (16) Related persons shall mean any corporations,
5 partnerships, limited liability companies, or joint ventures which
6 are or would otherwise be members of the same unitary group, if

7 incorporated, or any persons who are considered to be related
8 persons under either section 267(b) and (c) or section 707(b) of
9 the Internal Revenue Code of 1986;
10 ~~(15)~~ (17) Taxpayer shall mean any person subject to the
11 sales and use taxes and either an income tax imposed by the
12 Nebraska Revenue Act of 1967 or a franchise tax under sections
13 77-3801 to 77-3807, any corporation, partnership, limited liability
14 company, or joint venture that is or would otherwise be a member of
15 the same unitary group, if incorporated, which is, or whose
16 partners, members, or owners are, subject to such taxes, and any
17 other partnership, limited liability company, S corporation, or
18 joint venture when the partners, shareholders, or members are
19 subject to such taxes; and
20 ~~(16)~~ (18) Year shall mean the taxable year of the
21 taxpayer.

22 The changes made in this section by Laws 1997, LB 264,
23 apply to investments made or employment on or after January 1,
24 1997, and for all agreements in effect on or after January 1, 1997.
25 Sec. 6. Section 77-4104, Revised Statutes Supplement,
26 2002, is amended to read:

27 77-4104. (1) In order to utilize the incentives set
1 forth in the Employment and Investment Growth Act, the taxpayer
2 shall file an application for an agreement with the Tax
3 Commissioner.

4 (2) The application shall contain:

5 (a) A written statement describing the plan of employment
6 and investment for a qualified business in this state;

7 (b) Sufficient documents, plans, and specifications as
8 required by the Tax Commissioner to support the plan and to define
9 a project;

10 (c) If more than one location within this state is
11 involved, sufficient documentation to show that the employment and
12 investment at different locations are interdependent parts of the
13 plan. A headquarters shall be presumed to be interdependent with
14 any other location directly controlled by such headquarters. A
15 showing that the parts of the plan would be considered parts of a
16 unitary business for corporate income tax purposes shall not be
17 sufficient to show interdependence for the purposes of this
18 subdivision;

19 (d) A nonrefundable application fee of five hundred
20 dollars. The fee shall be deposited into the Employment and
21 Investment Growth Fund, which fund is hereby created. Any money in
22 the fund available for investment shall be invested by the state
23 investment officer pursuant to the Nebraska Capital Expansion Act
24 and the Nebraska State Funds Investment Act; and

25 (e) A timetable showing the expected sales tax refunds
26 and what year they are expected to be claimed. The timetable shall
27 include both direct refunds due to investment and credits taken as
1 sales tax refunds as accurately as possible.

2 The application and all supporting information shall be
3 confidential except for the name of the taxpayer, the location of
4 the project, the amounts of increased employment and investment,
5 and the information required to be reported by sections 77-4110 and
6 77-4113.

7 (3) Once satisfied that the plan in the application
8 defines a project consistent with the purposes stated in section
9 77-4102 in one or more qualified business activities within this
10 state, that the plans will result in ~~either~~ (a) the investment in
11 qualified property of at least three million dollars and the hiring
18 investment in qualified property resulting in a net gain in the
19 total value of tangible property in this state of a type subject to
20 depreciation, amortization, or other recovery under the Internal
21 Revenue Code of 1986 of at least twenty million dollars, and that
22 the required levels of employment and investment for the project
23 will be met prior to the end of the sixth year after the year in
24 which the application was submitted, the Tax Commissioner shall
25 approve the application. In determining the net gain in value for
26 purposes of this subsection, all tangible personal property shall
27 be valued in a manner consistent with the value determined for
1 qualified property, and the total value on the last day of each
2 year shall be compared with the total value on the last day of the
3 base year.

16 (5) After approval, the taxpayer and the Tax Commissioner
17 shall enter into a written agreement. The taxpayer shall agree to
18 complete the project, and the Tax Commissioner, on behalf of the
19 State of Nebraska, shall designate the approved plans of the
20 taxpayer as a project and, in consideration of the taxpayer's
21 agreement, agree to allow the taxpayer to use the incentives
22 contained in the Employment and Investment Growth Act. The
23 application, and all supporting documentation, to the extent
24 approved, shall be considered a part of the agreement. The
25 agreement shall state:

26 (a) The levels of employment and investment required by
27 the act for the project;

1 (b) The time period under the act in which the required
2 levels must be met;

3 (c) The documentation the taxpayer will need to supply
4 when claiming an incentive under the act;

5 (d) The date the application was filed; and

6 (e) A requirement that the company update the Department
7 of Revenue annually on any changes in plans or circumstances which
8 affect the timetable of sales tax refunds as set out in the
9 application. If the company fails to comply with this requirement,
10 the Tax Commissioner may defer any pending sales tax refunds until
11 the company does comply.

12 ~~(5)~~ (6) The incentives contained in section 77-4105 shall
13 be in lieu of the tax credits allowed by section 77-27,188 for any
14 project. In computing credits under section 77-27,188, any

15 investment or employment which is eligible for benefits under the
16 Employment and Investment Growth Act shall be subtracted from the
17 increases computed for determining the credits under section
18 77-27,188.

19 ~~(6)~~ (7) A taxpayer and the Tax Commissioner may enter
20 into agreements for more than one project and may include more than
21 one project in a single agreement. The projects may be either
22 sequential or concurrent. A project may involve the same location
23 as another project. No new employment or new investment shall be
24 included in more than one project for either the meeting of the
25 employment or investment requirements or the creation of credits.
26 When projects overlap and the plans do not clearly specify, then
27 the taxpayer shall specify in which project the employment and
1 investment belongs.

2 Sec. 7. Section 77-4105, Revised Statutes Supplement,
3 2002, is amended to read:

4 77-4105. (1) A taxpayer who has signed an agreement
5 under section 77-4104 may elect to determine taxable income for
6 purposes of the Nebraska income tax using the sales factor only.
7 The election may be made for the year during which the application
8 was filed and for each year thereafter through the eighth year
9 after the end of the entitlement period. The election shall be
10 made for the year of the election by computing taxable income using
11 the sales factor only on the tax return.

12 (2) A taxpayer who has signed an agreement under section
13 77-4104 shall receive the incentive provided in this subsection if
14 the agreement contains one or more projects which together will
15 result in the investment in qualified property of at least ten
16 million dollars and the hiring of at least one hundred new
17 employees. Such ten-million-dollar investment and hiring of at
18 least one hundred new employees shall be considered a required
19 level of investment and employment for this subsection and for the
20 recapture of personal property tax only.

21 The following property used in connection with such
22 project or projects and acquired by the taxpayer, whether by lease
23 or purchase, after the date the application was filed shall
24 constitute separate classes of personal property:

25 (a) Turbine-powered aircraft, including turboprop,
26 turbojet, and turboprop aircraft, except when any such aircraft is
27 used for fundraising for or for the transportation of an elected
1 official;

2 (b) Mainframe business computers used for business
3 information processing which require environmental controls of
4 temperature and power and which are capable of simultaneously
5 supporting more than one transaction and more than one user plus
6 peripheral components which require environmental controls of
7 temperature and power connected to such computers. Computer
8 peripheral components shall be limited to additional memory units,
9 tape drives, disk drives, power supplies, cooling units, and

10 communication controllers; and

11 (c) Personal property which is business equipment located
12 in a single project if (i) the business equipment is involved
13 directly in the manufacture or processing of agricultural products
14 and (ii) the investment in the single project exceeds ten million
15 dollars.

16 Such property shall be eligible for exemption from the
17 tax on personal property from the first January 1 following the
18 date of acquisition for property in subdivision (2)(a) of this
19 section, or from the first January 1 following the end of the year
20 during which the required levels were exceeded for property in
21 subdivisions (2)(b) and (2)(c) of this section, through the
22 sixteenth December 31 after the filing of the application. In
23 order to receive the property tax exemptions allowed by
24 subdivisions (2)(a), (2)(b), and (2)(c) of this section, the
25 taxpayer shall annually file a claim for exemption with the
26 Property Tax Administrator on or before May 1. The form and
27 supporting schedules shall be prescribed by the Property Tax
1 Administrator and shall list all property for which exemption is
2 being sought under this section. A separate claim for exemption
3 must be filed for each project and each county in which property is
4 claimed to be exempt. A copy of this form must also be filed with
5 the county assessor in each county in which the applicant is
6 requesting exemption. The Property Tax Administrator shall
7 determine the eligibility of each item listed for exemption and, on
8 or before August 10, certify such to the taxpayer and to the
9 affected county assessor. Notwithstanding any other provision of
10 law, the Property Tax Administrator shall be allowed access to the
11 applications and such other records of the Department of Revenue as
12 necessary in order to determine the eligibility for exemption.

13 (3) When the taxpayer has met the required levels of
14 employment and investment contained in the agreement, the taxpayer
15 shall also be entitled to the following incentives:

16 (a) A refund of all sales and use taxes paid under the
17 Nebraska Revenue Act of 1967, the Local Option Revenue Act, and
18 sections 13-319, 13-324, and 13-2813 from the date of the
19 application through the meeting of the required levels of
20 employment and investment for all purchases, including rentals, of:

21 (i) Qualified property used as a part of the project;

22 (ii) Property, excluding motor vehicles, based in this
23 state and used in both this state and another state in connection
24 with the project except when any such property is to be used for
25 fundraising for or for the transportation of an elected official;

26 (iii) Tangible personal property by the owner of the
27 improvement to real estate that is incorporated into real estate as
1 a part of a project; and

2 (iv) Tangible personal property by a contractor or
3 repairperson after appointment as a purchasing agent of the owner
4 of the improvement to real estate. The refund shall be based on

5 fifty percent of the contract price, excluding any land, as the
6 cost of materials subject to the sales and use tax; and
7 (b) A refund of the sales and use taxes paid under the
8 Nebraska Revenue Act of 1967, the Local Option Revenue Act, and
9 sections 13-319, 13-324, and 13-2813 on the types of purchases,
10 including rentals, listed in subdivision (a) of this subsection for
11 such taxes paid during each year of the entitlement period in which
12 the taxpayer is at or above the required levels of employment and
13 investment.

14 (4) Any taxpayer who qualifies for the incentives

15 contained in subsections (1) and (3) of this section and who has

20 (a) A credit equal to five percent of the amount by which
21 the total compensation paid during the year to employees who are
22 either Nebraska employees or base-year employees while employed at
23 the project exceeds the average compensation paid at the project

10 Sec. 10. Section 77-4112, Revised Statutes Supplement,
11 2002, is amended to read:

12 77-4112. (1) The changes made in sections 77-4103 to
13 77-4105 and 77-4107 by Laws 1988, LB 1234, shall become operative
14 for all applications filed on and after January 1, 1988. For all
15 applications filed prior to January 1, 1988, the provisions of the
16 Employment and Investment Growth Act as they existed immediately
17 prior to such date shall apply.

18 (2) Section 77-4113 and the changes made in section
19 77-4104 by Laws 1996, LB 1290, shall become operative for all
20 applications filed on or after May 1, 1996.

21 (3) The changes made in sections 77-4101 and 77-4103 by
22 Laws 1999, LB 539, and section 77-4103.01 shall become operative
23 for any taxpayer with an agreement in effect on or after January 1,
24 1999. Such changes and section 77-4103.01 shall be applied on a
25 consistent basis for determining benefits for tax years beginning,
26 or deemed to begin, on and after January 1, 1999. For all benefit
27 determinations in tax years beginning, or deemed to begin, prior to
1 January 1, 1999, the provisions of the Employment and Investment
2 Growth Act as they existed immediately prior to such date shall
3 apply.

4 (4) The changes made to sections 77-4103 to 77-4105 by
5 this legislative bill apply to applications filed on or after the
6 effective date of this act.

21 Sec. 12. Section 77-5536, Revised Statutes Supplement,
22 2002, is amended to read:

23 77-5536. (1) The board shall determine whether to
24 approve the company's application by majority vote based on its
25 determination as to whether the project will sufficiently help
26 enable the state to accomplish the purposes of the Invest Nebraska
27 Act. The board shall be governed by and shall take into
1 consideration all of the following factors in making its
2 determination:

3 (a) The timing, number, wage levels, employee benefit

4 package, and types of new jobs to be created by the project;

5 (b) The type of industry in which the company and the
6 project would be engaged;

7 (c) The timing, amount, and types of investment in
8 qualified property to be made at the project; and

9 (d) Whether the board believes the project would occur in
10 this state regardless of whether the application was approved.

11 (2) The weight given to each factor shall be determined
12 by each board member individually for each application. The
13 decision of the board shall be made in open meeting and is not
14 confidential.

15 (3) A project shall be considered eligible under the act
16 and may be approved by the board only if the application defines a
17 project consistent with the purposes contained in section 77-5502
18 in one or more qualified business activities within this state that
19 will result in (a) the investment in qualified property of at least
20 ten million dollars and the hiring of a number of new employees of
21 at least twenty-five. The investment and new employees for such
22 project shall count towards attaining and maintaining such
23 thresholds only if the qualified property is located in, and the
24 employee's principal place of employment for the company is located
25 in, one or more Nebraska counties having a population of less than
26 one hundred thousand individuals as of the end of the base year.

27 For this purpose, the population shall be conclusively determined
1 by the Department of Revenue, (b) the investment in qualified
2 property of at least fifty million dollars and the hiring of a
3 number of new employees of at least five hundred, (c) the
4 investment in qualified property of at least one hundred million
5 dollars and the hiring of a number of new employees of at least two
6 hundred fifty, or (d) the investment in qualified property of at
7 least two hundred million dollars and the hiring of a number of new
8 employees of at least five hundred.

9 (4) The new investment and employment shall occur within
10 seven years, meaning by the end of the sixth year after the end of
11 the year the application was filed, and shall be maintained for the
12 entire entitlement period. These thresholds shall constitute the
13 required levels of employment and investment for purposes of the
14 act.

15 (5)(a) An individual employed by the company, other than
16 a base-year employee, shall be considered an employee for purposes
17 of attaining and maintaining the required number of new employees
18 and shall be considered an employee whose compensation is included
19 in the calculation of the wage benefit credit only if the
20 compensation paid by the company to such employee for the year is
21 (i) for companies qualifying under the ten million dollar
22 investment and twenty-five new employee threshold under subdivision
23 (3)(a) of this section, at least one hundred percent of the
24 Nebraska average annual wage, (ii) for companies qualifying under
25 the fifty million dollar investment and five hundred new employee

26 threshold under subdivision (3)(b) of this section or the one
27 hundred million dollar investment and two hundred fifty new
1 employee threshold under subdivision (3)(c) of this section, at
2 least one hundred ten percent of the Nebraska average annual wage;
3 and (iii) for the companies applying under the two hundred million
4 dollar investment and five hundred new employee threshold of
5 subdivision (3)(d) of this section, at least one hundred twenty
6 percent of the Nebraska average annual wage.

7 (b) For the purposes of subdivision (a) of this
8 subsection, compensation paid by the company to such employee for
9 the year shall be the amount paid for the entire year for regular
10 hours worked, not including overtime, bonuses, or any other
11 irregular payments. If the employee works for less than a year,
12 the compensation paid will be annualized solely for the purpose of
13 comparison with the Nebraska average annual wage.

14 (6) If the project application is approved by the board,
15 the company and the state shall enter into a written agreement,
16 which shall be executed on behalf of the state by the Tax
17 Commissioner. In the agreement the company shall agree to complete
18 the project and the state shall designate the approved plans of the
19 company as a project and, in consideration of the company's
20 agreement, agree to allow the wage benefit credit or the investment
21 tax credit, as applicable, as provided for in the act. The
22 application, and all supporting documentation, to the extent
23 approved, shall be deemed a part of the agreement. The agreement
24 shall contain such terms and conditions as the board shall specify
25 in order to carry out the legislative purposes of the act. The
26 agreement shall contain provisions to allow the Department of
27 Revenue to verify that the required levels of employment and
1 investment have been attained and maintained. The agreement shall
2 contain provisions to require verification that the required levels
3 have been attained before any credits are used. The agreement
4 shall contain such other conditions or requirements, if any, for
5 the company as established by the department to carry out the
6 purposes of the act.

7 (7) Any investment or employment which is eligible for
8 benefits under the Quality Jobs Act shall not be included in a
9 project under the Invest Nebraska Act. A project under the Invest
10 Nebraska Act may involve the same location as another project under
11 the Invest Nebraska Act or under the Quality Jobs Act, except that
12 no new employment or new investment shall be included in more than
13 one project for either the meeting of the employment or investment
14 requirements or the creation of tax incentives. When projects
15 overlap and the project application does not otherwise clearly
16 specify, the company shall specify in which project the employment
17 and investment belongs. ~~Any~~

18 (8) For applications for projects that are not receiving
19 benefits under the Ethanol Development Act or applications filed
20 before the effective date of this act, any employment or investment

21 which is eligible for benefits under the Invest Nebraska Act may
 22 also be included in, and create incentives for, a project under the
 23 Employment and Investment Growth Act, the Employment Expansion and
 24 Investment Incentive Act, and the Rural Economic Opportunities Act,
 25 to the extent otherwise allowable under such respective acts. For
 26 applications filed on or after the effective date of this act, a
 27 taxpayer that is receiving benefits under the Ethanol Development
 1 Act may not receive benefits under the Invest Nebraska Act for the
 2 project that generates the incentive under the Ethanol Development
 3 Act.

4 ~~(8)~~ (9) In order to provide the degree of certainty
 5 necessary to enable a project to proceed, and notwithstanding any
 6 provision of Nebraska statute or common law to the contrary, to the
 7 extent any such right of appeal or challenge otherwise exists, no
 8 appeal or challenge of the board's decision by any person shall be
 9 filed after the expiration of thirty days after the board's
 10 decision.

11 Sec. 13. Original sections 50-419, 77-4110, and 77-4113,
 12 Reissue Revised Statutes of Nebraska, and sections 77-27,119,
 13 77-27,188, 77-4101, 77-4103 to 77-4105, 77-4112, and 77-5536,
 14 Revised Statutes Supplement, 2002, are repealed."

Pending.

AMENDMENTS - Print in Journal

Senator Landis filed the following amendment to LB 608:
 AM0831

(Amendments to Standing Committee amendments, AM0621)

- 1 1. Insert the following new section:
- 2 "Sec. 2. Section 77-2711, Revised Statutes Supplement,
- 3 2002, is amended to read:
- 4 77-2711. (1)(a) The Tax Commissioner shall enforce
- 5 sections 77-2702.03 to 77-2713 and may prescribe, adopt, and
- 6 enforce rules and regulations relating to the administration and
- 7 enforcement of such sections.
- 8 (b) The Tax Commissioner may prescribe the extent to
- 9 which any ruling or regulation shall be applied without retroactive
- 10 effect.
- 11 (2) The Tax Commissioner may employ accountants,
- 12 auditors, investigators, assistants, and clerks necessary for the
- 13 efficient administration of the Nebraska Revenue Act of 1967 and
- 14 may delegate authority to his or her representatives to conduct
- 15 hearings, prescribe regulations, or perform any other duties
- 16 imposed by such act.
- 17 (3)(a) Every seller, every retailer, and every person
- 18 storing, using, or otherwise consuming in this state property
- 19 purchased from a retailer shall keep such records, receipts,
- 20 invoices, and other pertinent papers in such form as the Tax

21 Commissioner may reasonably require.

22 (b) Every such seller, retailer, or person shall keep
23 such records for not less than three years from the making of such
1 records unless the Tax Commissioner in writing sooner authorized
2 their destruction.

3 (4) The Tax Commissioner or any person authorized in
4 writing by him or her may examine the books, papers, records, and
5 equipment of any person selling property and any person liable for
6 the use tax and may investigate the character of the business of
7 the person in order to verify the accuracy of any return made or,
8 if no return is made by the person, to ascertain and determine the
9 amount required to be paid. In the examination of any person
10 selling property or of any person liable for the use tax, an
11 inquiry shall be made as to the accuracy of the reporting of city
12 sales and use taxes for which the person is liable under the Local
13 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the
14 accuracy of the allocation made between the various counties,
15 cities, villages, and municipal counties of the tax due. The Tax
16 Commissioner may make or cause to be made copies of resale or
17 exemption certificates and may pay a reasonable amount to the
18 person having custody of the records for providing such copies.

19 (5) The taxpayer shall have the right to keep or store
20 his or her records at a point outside this state and shall make his
21 or her records available to the Tax Commissioner at all times.

22 (6) In administration of the use tax, the Tax
23 Commissioner may require the filing of reports by any person or
24 class of persons having in his, her, or their possession or custody
25 information relating to sales of property, the storage, use, or
26 other consumption of which is subject to the tax. The report shall
27 be filed when the Tax Commissioner requires and shall set forth the
1 names and addresses of purchasers of the property, the sales price
2 of the property, the date of sale, and such other information as
3 the Tax Commissioner may require.

4 (7) It shall be a Class I misdemeanor for the Tax
5 Commissioner or any official or employee of the Tax Commissioner to
6 make known in any manner whatever the business affairs, operations,
7 or information obtained by an investigation of records and
8 activities of any retailer or any other person visited or examined
9 in the discharge of official duty or the amount or source of
10 income, profits, losses, expenditures, or any particular thereof,
11 set forth or disclosed in any return, or to permit any return or
12 copy thereof, or any book containing any abstract or particulars
13 thereof to be seen or examined by any person not connected with the
14 Tax Commissioner. Nothing in this section shall be construed to
15 prohibit (a) the delivery to a taxpayer, his or her duly authorized
16 representative, or his or her successors, receivers, trustees,
17 executors, administrators, assignees, or guarantors, if directly
18 interested, of a certified copy of any return or report in
19 connection with his or her tax, (b) the publication of statistics

20 so classified as to prevent the identification of particular
21 reports or returns and the items thereof, (c) the inspection by the
22 Attorney General, other legal representative of the state, or
23 county attorney of the reports or returns of any taxpayer when
24 either (i) information on the reports or returns is considered by
25 the Attorney General to be relevant to any action or proceeding
26 instituted by the taxpayer or against whom an action or proceeding
27 is being considered or has been commenced by any state agency or
1 the county or (ii) the taxpayer has instituted an action to review
2 the tax based thereon or an action or proceeding against the
3 taxpayer for collection of tax or failure to comply with the
4 Nebraska Revenue Act of 1967 is being considered or has been
5 commenced, (d) the furnishing of any information to the United
6 States Government or to states allowing similar privileges to the
7 Tax Commissioner, (e) the disclosure of information and records to
8 a collection agency contracting with the Tax Commissioner pursuant
9 to sections 77-377.01 to 77-377.04, ~~or~~ (f) the disclosure to
10 another party to a transaction of information and records
11 concerning the transaction between the taxpayer and the other
12 party, or (g) the disclosure of information pursuant to section
13 77-4104, 77-4110, or section 9 of this act.

14 (8) Notwithstanding the provisions of subsection (7) of
15 this section, the Tax Commissioner may permit the Postal Inspector
16 of the United States Postal Service or his or her delegates to
17 inspect the reports or returns of any person filed pursuant to the
18 Nebraska Revenue Act of 1967 when information on the reports or
19 returns is relevant to any action or proceeding instituted or being
20 considered by the United States Postal Service against such person
21 for the fraudulent use of the mails to carry and deliver false and
22 fraudulent tax returns to the Tax Commissioner with the intent to
23 defraud the State of Nebraska or to evade the payment of Nebraska
24 state taxes.

25 (9) Notwithstanding the provisions of subsection (7) of
26 this section, the Tax Commissioner may permit other tax officials
27 of this state to inspect the tax returns, reports, and applications
1 filed under sections 77-2702.03 to 77-2713, but such inspection
2 shall be permitted only for purposes of enforcing a tax law and
3 only to the extent and under the conditions prescribed by the rules
4 and regulations of the Tax Commissioner.

5 (10) Notwithstanding the provisions of subsection (7) of
6 this section, the Tax Commissioner may, upon request, provide the
7 county board of any county which has exercised the authority
8 granted by section 81-1254 with a list of the names and addresses
9 of the hotels located within the county for which lodging sales tax
10 returns have been filed or for which lodging sales taxes have been
11 remitted for the county's County Visitors Promotion Fund under the
12 Nebraska Visitors Development Act.

13 The information provided by the Tax Commissioner shall
14 indicate only the names and addresses of the hotels located within

15 the requesting county for which lodging sales tax returns have been
 16 filed for a specified period and the fact that lodging sales taxes
 17 remitted by or on behalf of the hotel have constituted a portion of
 18 the total sum remitted by the state to the county for a specified
 19 period under the provisions of the Nebraska Visitors Development
 20 Act. No additional information shall be revealed.

21 (11) In all proceedings under the Nebraska Revenue Act of
 22 1967, the Tax Commissioner may act for and on behalf of the people
 23 of the State of Nebraska. The Tax Commissioner in his or her
 24 discretion may waive all or part of any penalties provided by the
 25 provisions of such act, but may not waive the minimum interest on
 26 delinquent taxes specified in section 45-104.02, as such rate may
 27 from time to time be adjusted, except interest on use taxes
 1 voluntarily reported by an individual."

2 2. On page 2, line 8; page 6, line 22; and page 15, line
 3 12, strike "8" and insert "9".

4 3. On page 29, line 16, strike "qualifying" and insert
 5 "that have qualified"; in line 21 after the period insert "Portions
 6 of the application and the forms submitted to claim credits that do
 7 not contain any federal information and other information, after
 8 properly aggregated to meet federal criteria for disclosure for
 9 statistical purposes, shall be disclosed to the Legislative Fiscal
 10 Analyst"; and in line 24 strike "any information" and after
 11 "person" insert "any information".

12 4. On page 37, line 11, after the first comma insert
 13 "77-2711,".

14 5. Renumber the remaining sections accordingly.

Senator D. Pederson filed the following amendment to LB 608:
 AM0803

(Amendments to Standing Committee amendments, AM0621)

1 1. On page 16, lines 21 through 26; page 17, line 3; and
 2 page 18, lines 7 and 14, strike the new matter and reinstate the
 3 stricken matter.

4 2. On page 18, line 22, strike "(15)" and insert "(14)".

5 3. On page 19, line 4, strike "(16)" and insert "(15)";
 6 in line 10 strike "(17)" and insert "(16)"; and in line 20 strike
 7 "(18)" and insert "(17)".

8 4. On page 22, lines 4 through 27, strike the new matter
 9 and insert "(a) An individual shall be considered a base-year
 10 employee of the taxpayer or as an employee of the taxpayer for
 11 purposes of the calculation of the number of employees during the
 12 base year and for purposes of attaining and maintaining the
 13 required number of new employees and shall be considered an
 14 employee whose compensation is included in the calculation of the
 15 compensation credit only if the compensation paid by the taxpayer
 16 to such employee for the applicable year is (i) for projects
 17 qualifying under subdivision (3)(b) of this section, at least one
 18 hundred forty percent of the minimum annual wage, and (ii) for

- 19 projects qualifying under subdivision (3)(a) of this section, at
 20 least one hundred sixty percent of the minimum annual wage.
 21 (b) For purposes of subdivision (a) of this subsection,
 22 compensation paid by the taxpayer to such employee for the year
 23 shall be the amount paid for the entire year for regular hours
 1 worked, not including overtime, bonuses, or any other irregular
 2 payments. If the employee works for less than a year, the
 3 compensation paid will be annualized solely for the purpose of
 4 comparison with the minimum annual wage.
 5 (c) For purposes of subdivision (a) of this subsection,
 6 the minimum annual wage shall be the federal minimum hourly wage
 7 multiplied by 2080. The federal minimum hourly wage on January 1
 8 shall be used for all tax years beginning or deemed to begin during
 9 that calendar year."
 10 5. On page 23, strike lines 1 through 3.

Senator Jensen filed the following amendment to LB 667:
 (Amendment, AM0821, is printed separately and available in the Bill Room,
 Room 1104.)

Senator Landis filed the following amendment to LB 608:
 AM0858

(Amendments to Standing Committee amendments, AM0621)

- 1 1. On page 30, line 25, after "(4)" insert "For all
- 2 applications files on or after the effective date of this act, the
- 3 report shall also contain the total amount of benefits used by the
- 4 taxpayers in the year. The information shall be reported by each
- 5 individual taxpayer, aggregating credits used and sales tax refunds
- 6 used during the year into a single number.
- 7 (5)"; and in line 27 strike "(5)", show as stricken, and
- 8 insert "(6)".

Senator Chambers filed the following amendment to LB 209:
 FA1201

Page 4, in line 6, reinstate the stricken word.

Senator Chambers filed the following amendment to LB 209:
 FA1202

Strike section 5.

Senator Chambers filed the following amendment to LB 209:
 FA1203

Strike original provisions and repeal outright Sections 60-498, 60-4,110,
 60-4,129, 60-6,208, 60-6,211.04, 83-1,129, 84-205, and 84-913.03, R.R.S.
 Neb., and sections 60-462, 60-479, 60-4,118.06, 60-6,196, 60-6,197,
 60-6,205 to 60-6,207, 60-6,209 and 60-6,211.05, Rev. Stat. Supp., 2002.

Senators Bromm and Mines filed the following amendment to LB 608:
 AM0845

(Amendments to Standing Committee amendments, AM0621)

- 1 1. On page 21, line 13, strike "three" and insert "one";
- 2 and in line 14 strike "twenty" and insert "ten".
- 3 2. On page 28, line 17, strike "twenty" and insert
- 4 "ten".

RESOLUTIONS

LEGISLATIVE RESOLUTION 51. Introduced by Combs, 32.

WHEREAS, Hunter Mason Shultz, of Troop 302, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest advancement rank in Scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks: Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle. Throughout his Scouting experience, Hunter Shultz has learned, been tested and reviewed on, and been recognized for various Scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council. Hunter Shultz earned 32 merit badges and, for his Eagle Scout community service project, designed and constructed a bridge at Camp Jefferson, southeast of Fairbury, Nebraska; and

WHEREAS, only two percent of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, on Sunday, April 13, 2003, Hunter Shultz will receive the rank of Eagle Scout, thereby, through his hard work and perseverance, joining other high achievers who are Eagle Scouts such as astronauts, political and industry leaders, artists, scientists, and athletes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Hunter Shultz on achieving the rank of Eagle Scout.
2. That a copy of this resolution be sent to Hunter Shultz.

Laid over.

LEGISLATIVE RESOLUTION 52. Introduced by Cunningham, 40; Wehrbein, 2; D. Pederson, 42; Engel, 17; Kremer, 34; Byars, 30; Jensen, 20; Smith, 48.

WHEREAS, good health is important to every citizen of the world and access to the highest standards of health information and services is necessary to improve public health; and

WHEREAS, direct and unobstructed participation in international health cooperation forums and programs is beneficial for the cross-border world,

especially with today's greater potential for the cross-border spread of various infectious diseases, such as the human immunodeficiency virus, tuberculosis, and malaria; and

WHEREAS, Taiwan's population of 23,500,000 people is larger than that of three-fourths of the member states in the World Health Organization; and

WHEREAS, Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia; maternal and infant mortality rates comparable to those of western countries; the eradication of such infectious diseases as cholera, smallpox, the plagues, and polio; and providing hepatitis B vaccinations to children; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwan counterpart agencies have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years, Taiwan has expressed a willingness to assist financially and technically in international aid and health activities supported by the World Health Organization; and

WHEREAS, the World Health Organization has allowed observers to participate in the activities of the organization, including the Palestine Liberation Organization in 1974 and the Order of Malta and the Holy See in the early 1950's; and

WHEREAS, the United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organization.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That, in light of all the benefits that Taiwan's participation in the World Health Organization can bring to the state of health not only in Taiwan, but also regionally and globally, the members of the Nebraska Legislature endorse observer status for Taiwan to join the World Health Organization.

2. That copies of this resolution be sent to President George W. Bush, Secretary of State Colin Powell, Secretary of Health and Human Services Tommy Thompson, United States Senator Chuck Hagel, United States Senator Ben Nelson, United States Congressman Doug Bereuter, United States Congressman Lee Terry, United States Congressman Tom Osborne, and the Taipei Economic and Cultural Office in Kansas City, Missouri.

Laid over.

LEGISLATIVE RESOLUTION 53. Introduced by Jones, 43.

WHEREAS, the Lynch Eagles boys' basketball team won the Class D-2 boys' state basketball championship with a 63-38 victory over Shickley; and

WHEREAS, the Lynch Eagles boys' basketball team was the seventh seed in the eight-team tournament; and

WHEREAS, the Lynch Eagles boy's basketball team capped its first-ever tournament championship by defeating teams seeded first, second, and sixth, winning the three games by an average of twenty points; and

WHEREAS, the Lynch Eagles boys' basketball team and its coach Kris

Freeland should be congratulated for their hard work, perseverance, and exemplary sportsmanship.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the Lynch Eagles boys' basketball team and Coach Kris Freeland on winning the Class D-2 boys' state basketball championship.

2. That a copy of this resolution be sent to Lynch High School.

Laid over.

LEGISLATIVE RESOLUTION 54. Introduced by Jones, 43.

WHEREAS, on March 15, 2003, the Spencer-Naper Pirates defeated the Howells Bobcats 32-31 and thereby won the title of Class D-1 State High School Boys' Basketball State Champions; and

WHEREAS, the Spencer-Naper boys' basketball team is the winner of 55 straight games and has an 82-1 record for the past three seasons; and

WHEREAS, this achievement is the result of hard work, talent, and dedication of the team members and their coach, Jim Carlson; and

WHEREAS, the communities of Spencer and Naper and the State of Nebraska can be proud of these students, their coaches, and their school.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the members of the Spencer-Naper boys' basketball team and their coach, Jim Carlson.

2. That a copy of this resolution be sent to Spencer-Naper High School.

Laid over.

UNANIMOUS CONSENT - Add Cointroducers

Senator Combs asked unanimous consent to have her name added as cointroducer to LB 162. No objections. So ordered.

Senator Mines asked unanimous consent to have his name added as cointroducer to LB 643. No objections. So ordered.

VISITORS

Visitors to the Chamber were Anthony and Jim Ostdiek from Bayard; Kelsey Razmiarek from Platte Center; Emily Schumacher from Omaha; 37 sixth-grade students and teacher from Cross County Community School, Benedict; 50 fifth-grade students and teachers from Milliken Park Elementary School, Fremont; and 11 eighth-grade students and teacher from St. Mary's School, Lincoln.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Brashear, the Legislature adjourned until 9:00 a.m., Tuesday, March 18, 2003.

Patrick J. O'Donnell
Clerk of the Legislature

